

Order

Michigan Supreme Court
Lansing, Michigan

October 16, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2007-09

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of 2.306
of the Michigan Court Rules
(to require objections at depositions
to be concise, nonargumentative, and
nonsuggestive and to allow for the
imposition of sanctions)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.306 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Deletions are indicated by strikethrough and insertions by underline.]

Rule 2.306 Depositions on Oral Examination

(A)-(C)[Unchanged.]

(D) Motion to Terminate or Limit Examination.

- (1) Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner.
- (2) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose on the person

or persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any party as a result thereof.

- ~~(1)~~(3) At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in a manner unreasonably to annoy, embarrass, or oppress the deponent or party, or that the matter inquired about is privileged, a court in which the action is pending or the court in the county or district where the deposition is being taken may order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in MCR 2.302(C). If the order entered terminates the examination, it may resume only on order of the court in which the action is pending.
- ~~(2)~~(4) On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for an order. MCR 2.313(A)(5) applies to the award of expenses incurred in relation to the motion.
- ~~(3)~~(5) If a party knows before the time scheduled for the taking of a deposition that he or she will assert that the matter to be inquired about is privileged, the party must move to prevent the taking of the deposition before its occurrence or be subject to costs under subrule (G).
- ~~(4)~~(6) A party who has a privilege regarding part or all of the testimony of a deponent must either assert the privilege at the deposition or lose the privilege as to that testimony for purposes of the action. A party who claims a privilege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition. A party who asserts a privilege regarding medical information is subject to the provisions of MCR 2.314(B).

(E)-(G)[Unchanged.]

Staff Comment: This proposal would require objections to be concise, nonargumentative, and nonsuggestive, and would allow a court to impose sanctions against an attorney who fails to comply with the requirement. The proposed changes are similar to language contained in FR Civ P 30(d)(1).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2008, at P.O. Box 30052, Lansing, MI 38909, or MSC_clerk@courts.mi.gov. All comments will be posted on the Court's website. When filing a comment, please refer to ADM File No. 2007-09.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2007

Corbin R. Davis
Clerk